Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04–208

REPLY COMMENTS OF T-MOBILE USA, INC.

Thomas J. Sugrue
Vice President, Government Affairs
Kathleen O'Brien Ham
Managing Director,
Federal Regulatory Affairs
James W. Hedlund
Senior Corporate Counsel,
Federal Regulatory Affairs

T-MOBILE USA, INC.
401 Ninth Street, N.W.
Suite 550
Washington, D.C. 20004
(202) 654-5900

Sara F. Leibman
Howard J. Symons
Robert G. Kidwell
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

July 25, 2005

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)))	CG Docket No. 04–208

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") hereby submits its reply comments on the Second Further Notice of Proposed Rulemaking issued in the above-captioned docket.[1/]

INTRODUCTION AND SUMMARY

As T-Mobile described in its initial comments in this proceeding, and as the record before the Commission clearly demonstrates, one of the primary means by which wireless providers compete to obtain and retain subscribers is through the provision of excellent customer service. Numerous commenters, including all of the major national providers of wireless service, have described the growing imperative to identify and fulfill consumers' needs and wants in order to stay competitive. The Commission is well aware that regulation is a poor proxy for market-based competition -- in the market for wireless services, there is no evidence of any failure that would justify the Commission's turning its back on competitive forces in favor of regulatory micromanagement. This is particularly the case because such micromanagement would

---

1/ *Truth-in-Billing and Billing Format, National Association of State Utility Consumer Advocates Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04–208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55 (rel. March 18, 2005) ("*TIB Second Order*" or "*TIB Second FNPRM*").

inevitably lead to higher costs for consumers and would likely result in *less* consumer satisfaction and *more* consumer confusion.

To the extent the Commission decides to impose further regulatory guidelines in the name of truth-in-billing, then it should take seriously its goal of ensuring that consumers hear the "truth" and avoid any rule that would allow federal, local, or state governments to impose hidden costs upon consumers. Consumers should know the genesis of taxes and regulatory fees that inflate the bottom line on their bills regardless of whether the charge is nominally imposed on the subscriber or on the carrier. Furthermore, carriers should be allowed -- and, in fact, have a First Amendment right -- to determine the best way to disclose such charges to their subscribers.

As stated, the record in this case clearly supports the Commission's leaving well enough alone with regard to any further truth-in-billing regulations. Regardless of the outcome on that point, however, the Commission should take this opportunity to make clear that all state regulation of the form or content of wireless bills or point-of-sale disclosures -- including putative "enforcement" of existing or future federal statutes and rules -- is preempted by the federal scheme of wireless regulation. A review of the many pending state initiatives aimed at micromanaging wireless billing demonstrates a certain and serious threat to Congress's and the Commission's intent that the wireless regime be governed primarily by market forces. In light of the marked upsurge in litigation playing upon the ambiguities in the area of wireless preemption, it is critical that the Commission seize this ripe opportunity to inject clarity and certainty into the marketplace for the benefit of consumers.

I. ADDITIONAL REGULATION OF CARRIERS' BILLING PRACTICES IS UNNECESSARY TO PROTECT CONSUMERS

A. New and Intrusive Billing Format Rules Are Unnecessary

The Commission recently reiterated that its preferred regulatory approach for the wireless industry is to rely "on market forces, rather than regulation, except when there is market failure."[2/] With respect to wireless billing and related matters, there has been no market failure. To the contrary, the hallmark of the wireless market is customer satisfaction. After initial comments were filed in this docket, the National Consumers League released the results of its comprehensive survey of consumer attitudes about communications services, and the results undeniably show that the wireless market is functioning very well.[3/] Indeed, the survey, conducted by the market research firm Harris Interactive, found that a stunning 90 percent of wireless subscribers are satisfied with their service, and 75 percent felt that they were getting a good value from their service. These results are not surprising, as the comments filed in this docket are replete with examples of the voluntary -- *business driven* -- measures wireless carriers have initiated to improve customer service, provide easily understandable bills, and ensure that prospective customers have complete information about the rates, terms, and conditions of the services they will be purchasing.

In its initial comments, T-Mobile described its groundbreaking "Personal Coverage Check" feature, which allows consumers to assess the quality of T-Mobile's signal coverage down to the neighborhood level. As a result of T-Mobile's unflagging commitment to improve customer satisfaction, it has received multiple awards for "Highest Ranked Customer Service

---

2/ *See Orloff v. Vodafone Airtouch Licenses LLC, d/b/a Verizon Wireless*, 17 FCC Rcd 8987, 8998 n.69 ¶ 22 (2002), *pet for review denied sub nom. Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003), *cert denied*, 124 S. Ct. 2907 (2004).

3/ "Consumers and Communications Technologies: Current and Future Use," available at http://nclnet.org/research/utilities/telecom_survey_harris.pdf

Performance" among all wireless carriers.[4/] Other carriers have likewise improved customer service and customer billing in response to market forces. Nextel overhauled its billing system in 2002 to respond to customer demand for uniform, easily comprehensible statements and strong customer care.[5/] Cingular provides each consumer with a personalized estimate of charges associated with the chosen service plan that will appear on the consumer's next two bills.[6/]

In addition, more than thirty wireless carriers, including T-Mobile and each of its nationwide competitors, are signatories to the CTIA Consumer Code, which represents a concerted industry effort to address the billing and disclosure issues of greatest concern to the consumers that keep them in business. As United States Cellular Corporation ("USCC") notes, "[t]he wireless industry is . . . a textbook example of the power of competition to enhance consumer welfare and serve the public interest. . . . [T]he industry does not deserve more heavy handed bureaucratic intervention concerning how it communicates with its customers."[7/]

The consumer organizations and state commissions, by contrast, point to the Commission's statement that wireless billing complaints increased in 2004 for their proposition that "consumers are unhappy with misleading or confusing wireless bills."[8/] As Sprint points out, however, the number of complaints is far from expanding and has remained small as a

---

4/ T-Mobile Comments at 3-4. Wireline carriers likewise have made significant improvements to their billing systems and customer care procedures in response to customer feedback. Last year, Verizon conducted a study to determine consumer preferences for bill format. Verizon Comments at 5.

5/ Nextel Comments at 2-3. As Nextel notes, it previously had relied on twelve different billing systems, built loosely around state and regional boundaries, but it found the "silos" crated by the systems made it much harder for customer care representatives to access customer billing information or make adjustments and changes. *Id.*

6/ Cingular Comments at 3.

7/ USCC Comments at 7.

8/ Oklahoma Corporation Commission Comments at 2. *See also* Arizona Commission Comments at 6 (citing *TIB Second Order* ¶ 16); NASUCA Comments at 5.

relative matter. Specifically, the Commission cites approximately 18,000 wireless billing related complaints that it received in 2004 but does not mention that the year ended with over 182 million wireless customers. That "constitutes a complaint rate of 0.01 percent -- or one complaint per every 10,100 wireless customers" -- hardly a noteworthy figure.[9/] Verizon Wireless similarly reports that it has been tracking its own customers' complaints for the past two years and, "[e]xcept for the brief rise in complaints in the first quarter of 2004 largely due to the implementation of local number portability ("LNP"), customer complaint levels tracked at all agencies including the FCC, the state attorneys general, and the state commissions, have been falling."[10/]

The limited anecdotal information supplied by state commissions likewise does not support the commenters' claims of widespread consumer dissatisfaction with wireless billing. The Missouri Public Service Commission, for example, cites just *one* comment from a Missouri consumer alleging that the "telephone company" (presumably wireline) gives out incorrect answers to inquiries about whether fees and taxes are government imposed, and asserts that it reviewed *one* bill -- issued by ILD Teleservices, Inc., a billing clearinghouse unconnected to wireless carriers -- that contained some redundant labels. Verizon Wireless points out that Minnesota "could only offer a 'handful' of affidavits of consumer complaints" when it was asked to justify a state statute that mandated significant changes in wireless contracts.[11/] And, in any event, the issue about which most consumers appear to be complaining is the fact that carriers assess line item charges at all -- not that they have mislabeled or otherwise misrepresented such

---

9/ Sprint Comments at 16.

10/ Verizon Wireless Comments at 35.

11/ Verizon Wireless Comments at 35.

charges on bills.[12/] Considering that the Commission recently *confirmed* that it is not unreasonable for carriers' billing statements to include non-misleading line items,[13/] the evidence offered by the consumer groups and states is hardly demonstrative of a problem in need of the intrusive remedies proposed in the *TIB Second FNPRM*.[14/]

B. The Commission Should Take into Account the High Costs of Regulatory Micromanagement of Carrier Billing Practices

Not only does the record reflect no need to adopt more billing rules, it makes clear that the costs associated with such additional regulation would be exceedingly high. T-Mobile's recent experience implementing the California "Bill of Rights"[15/] demonstrates that the costs of complying with *just one* state's attempt at comprehensive regulation can be substantial. Although T-Mobile has never attempted to quantify the exact cost of its compliance activities with respect to the California rules, T-Mobile needed to assemble a company-wide project team consisting of approximately 20 working groups with hundreds of personnel, in addition to securing the help of multiple outside contractors and vendors. Changes made to implement the

---

12/ Verizon Wireless notes that one of the comments the Commission relies on for its proposition that telephone bills are confusing states, in total: "Line item charges are the devil." Verizon Wireless Comments at 35 (citing *TIB Second Order* at n.65); *see also* National Association of Attorneys General ("NAAG") Comments at 3 ("At the heart of much consumer confusion and related complaints is the carriers' practice of incorporating carrier add-on charges as line items to the bills of CMRS consumers to mask the true price of the services they provide.").

13/ *TIB Second Order* ¶ 23.

14/ Some of the consumer organization commenters refer to the 20,000 identical sets of comments filed in response to NASUCA's petition. Although Consumers Union may have been able to stir up a successful email campaign, form letters complaining that carriers should not be permitted to assess line item charges do not provide the sort of empirical data necessary to justify the adoption of new and burdensome billing format rules.

15/ On January 27, 2005, the CPUC voted to suspend its sweeping "bill of rights" in order to give the commission the opportunity to determine whether and to what extent the rules should be revised. Subsequently, the CPUC requested comment on an amended, and significantly less intrusive, set of rules. *See Order Instituting Rulemaking on the Commission's Own Motion To Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities*, Assigned Commissioner's Ruling, R.00-02-004 (CPUC May 2, 2005).

rules affected virtually all aspects of the company's operations, and required training all of T-Mobile's customer service representatives nationwide on the California-specific material.[16/] Because T-Mobile uses a unified, nationwide billing system, there was no feasible way to apply California bill format changes only to California customers. Obviously, this solution would not work if multiple states each chose to impose contradictory or inconsistent requirements.

The record confirms that T-Mobile's experience with implementation of the California legislation typifies the challenges that wireless carriers would face if the Commission allows the states to impose their own disparate billing rules. Nextel, for example, explains that "many subsystems comprise a billing system, which in turn interacts with many other systems. A typical billing system contains literally hundreds of data tables containing a vast array of information that must be consulted to render an accurate bill."[17/] Because "[t]here are few aspects of a telecommunications carrier's business that are untouched by the carrier's billing system," altering the system, especially if the changes are unanticipated, is even more expensive than developing, implementing, and maintaining the system. "[E]ven small alterations in one part of the system can have unintended and unpredictable consequences elsewhere in the system."[18/] For instance, when Nextel made "a seemingly innocuous change in font size" on its bills, it rendered Nextel's subpoena compliance group unable to redact subpoenaed bills electronically. Similarly, a slight change in Nextel's bill production and printing process caused

---

16/ T-Mobile distributes calls to its customer service centers on a nationwide basis, in order to minimize hold time for customers. As a result, it is possible for any customer service representative in the country to receive a call from a California customer, necessitating that all be trained in the California rules.

17/ Nextel Comments at 4.

18/ Nextel Comments at 5.

a line of optically readable characters at the bottom of the bill to shift slightly, which prevented the lockbox collecting facility from reading the bill automatically.[19/]

Cingular similarly describes the complexity of its billing systems, which require the use of outside vendors as well as an extensive in-house information technology staff. Cingular states that because of this complexity and the effects of billing changes on other systems (*e.g.*, point of sale and customer care systems and promotional materials), "in the best of times changes take eight to nine months. . . [W]hen numerous major changes are made (*e.g.*, in connection with the integration of AT&T Wireless and Cingular) a longer time frame is needed."[20/] Cingular explains that "*any* change to the bill format requires software modifications that must be extensively tested to ensure that the bills produced thereby not only meet regulatory requirements but also convey the relevant information timely, efficiently, and in a well-formatted, readable manner. Cingular must provide the software developer a detailed specification of the changes and go through several iterations of software testing before the modifications can be brought on line, a process that can take up to 12 months, or even more for a more significant change."[21/]

Not only are billing format alterations time consuming, they are confusing for consumers, and extremely expensive to implement. As Sprint notes, "every detailed regulation that touches these complex systems can have millions of dollars of potential cost, all of which must ultimately be paid by consumers."[22/] MCI asserts that redesigning its billing format to separate sections for

---

19/ Nextel Comments at 7.

20/ Cingular Comments at 13.

21/ Cingular Comments at 15 (emphasis in original); *see also* Sprint Comments at 15 ("Any modification to such billing platforms requires months if not years of lead time."); Dobson Comments at 8-9 (stating that it may take many months to effectuate billing format changes).

22/ Sprint Comments at 15.

certain charges would cost approximately $5.3 million, not including the costs to market the new format and train customer service representatives.[23/] SBC agrees, explaining that creating new billing categories would take about ten to twelve months at a cost of $1.6 million. Nextel states that if just one mandated line item description were to exceed its system's built-in character limitation, making the change would involve 1,000 person hours and $200,000. Verizon echoes that if government mandates were to add another page to its monthly invoices, the increased postage alone would amount to $34 million.

The costs of increased regulation do not merely involve time and money. A number of commenters concur with T-Mobile's assessment that shackling carriers with prescriptive requirements limits their ability to compete on the basis of customer service.[24/] Verizon explains, for example, that carriers regularly seek to differentiate themselves through initiatives like customer-friendly bills and responsive customer service. Rigid and expensive billing rules undermine such efforts.[25/] MCI, likewise, contends that detailed rules would stifle carriers' creativity in responding to consumer demands, and Sprint notes that a one-size-fits-all approach to regulation reduces experimentation and innovation.[26/] AT&T also asserts that billing is an important attribute by which carriers distinguish themselves, and one which customers experience monthly.[27/] Consumers stand to benefit far more when, as is the case today, competitive conditions cause carriers to better each other's billing and customer care improvements than if carriers are required to act in lock-step and divert resources to redesigning

---

23/ MCI Comments at 4.

24/ T-Mobile Comments at 15-16.

25/ Verizon Comments at 5.

26/ MCI Comments at 10; Sprint Comments at 20.

27/ AT&T Comments at n.14.

bills according to a government plan that may cost the consumer more and complicate service. Competitive choice is a much better arbiter of consumer needs than arbitrary government fiat.

The Commission previously has observed that "all regulation necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted."[28/] In light of the considerable costs associated with adoption of the billing format and disclosure rules set forth in the *TIB Second FNPRM*, and the absolute dearth of evidence demonstrating any market failure, such action plainly is not warranted. As each carrier emphasizes, it would not be able to survive in the extremely competitive wireless marketplace if it failed to do everything possible to keep its customers satisfied or to attract new customers from its competitors. The record clearly demonstrates that the best approach for sustained competition and consumer welfare would be for the Commission to continue to rely primarily on competitive forces in regulating the wireless industry.

II. IF THE COMMISSION ADOPTS NEW BILLING AND DISCLOSURE RULES, IT SHOULD ENSURE THEY ARE THE LEAST INTRUSIVE MEANS OF ADDRESSING THE PERCEIVED PROBLEM

The *TIB Second FNPRM* seeks comment on potential new rules in four general categories -- (1) separation of "government-mandated" charges on bills; (2) labeling of categories of charges; (3) combination of line item charges; and (4) point of sale disclosures. For the reasons outlined above, such rules are unnecessary. If the Commission nonetheless decides to adopt billing rules, they should be narrowly targeted. As proposed, the Commissions' detailed regulations would be exceedingly difficult to implement in a cost-effective, timely, and non-discriminatory manner.

28/ *CMRS Interconnection and Resale Obligations*, 11 FCC Rcd 18455, 18463 ¶ 14 (1996).

A. Separation of "Government-Mandated" Charges

CTIA, T-Mobile, and all of the wireline carriers commenting on this issue believe that the Commission's second suggested definition of "mandated" charges -- amounts collected by carriers from their customers and "remitted directly to a governmental entity or its agent"[29/] -- most accurately reflects the origin of the cost and prevents governments from avoiding taxpayer accountability.[30/] As T-Mobile discussed in its initial comments, this approach would draw a clear line between fees that are a direct pass-though to the government and fees that are collected and retained by the carrier. The alternative approach, which would identify mandated charges as those that "a carrier is *required* to collect directly from customers and remit to federal, state or local governments," would allow government entities to impose hidden costs upon consumers by assessing fees on carriers but not "requiring" that those fees be passed through to consumers. The Commission's stated goal of ensuring "truth-in-billing" should extend no less to carriers' recovery of government-imposed costs than the government's imposition of costs directly on consumers.[31/]

As SBC points out, Connecticut and Oklahoma expressly require carriers to collect taxes from their customers, but Wisconsin and Missouri merely give carriers the "discretion" to do so.[32/] The classification of a tax as "discretionary" or "mandatory" for purposes of its bill placement should not turn on a state legislature's whim -- assuming, that is, that state legislatures

---

29/ *TIB Second FNPRM* ¶ 41.

30/ *See, e.g.*, CTIA Comments at 4-6; T-Mobile Comments at 9; CCTM Comments at 17; SBC Comments at 7-8; USTelecom Comments at 4.

31/ Additionally, on a practical level, given that T-Mobile currently categorizes charges on its bills pursuant to the CTIA Code's definition of "mandated," which is the same as the second definition proposed by the Commission in the *FNPRM*, adoption of a separation requirement under any other definition would be extremely costly and time consuming to implement. As Cingular notes, carriers must be given adequate lead time -- at least a year -- to incorporate any new billing format requirements. Cingular Comments at 15.

32/ SBC Comments at n.17.

are capable of being uniformly unambiguous in their expression of which items are "discretionary" and which are "mandatory." Experience suggests that the opposite is true, and that the only certain outcome of such a rule would be state-level litigation on statutory interpretation.

If the government requires a carrier to remit a fee to it, then it should not be deemed an optional customer charge. CCTM fittingly observes that "[i]t is disingenuous for the Commission, in conjunction with state regulators, to assess fee after fee on carriers (some changing quarterly such as USF), and then, when faced with disgruntled consumers, wash its hands of such fees and force carriers to structure their bills so as to make it appear that such charges are purely discretionary."[33/]

B. Labeling Categories of Charges

As many commenters explain, there are serious First Amendment concerns associated with government-imposed labeling requirements for wireless bills. It is far from clear that such rules could withstand a challenge under the criteria established by the Supreme Court in *Central Hudson*.[34/] Under these criteria, a state may not restrict lawful, non-misleading commercial speech unless it can demonstrate that there is a substantial government interest at issue and the proposed restriction directly advances that interest without resort to speculation or conjecture.[35/]

The infringement of carriers' speech rights would be especially problematic if the labels are designed, as NAAG urges, to preclude any reference to the genesis of the charge.[36/] It is not misleading for carriers to tell their customers that they are being assessed certain fees so that the

---

33/ CCTM Comments at 17.

34/ *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

35/ *Id.*; *Edenfield v. Fane*, 507 U.S. 761, 770 (1993); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648 (1985).

36/ NAAG Comments at 9-10.

carrier can recover the costs of government-mandated programs, such as E911, LNP, CALEA, and number pooling. On the contrary, it is important to *consumers'* First Amendment interests that they receive full information about the services for which they are paying.

In addition, as MCI and Verizon Wireless explain, carriers are constantly modifying and expanding the services and features they provide to new and long-standing customers. Government-scripted labels are unlikely to keep pace with the changing market could easily become obsolete in a matter of months.[37/] Moreover, labeling requirements could be very expensive to implement if they required significant changes to billing systems. As discussed above, Nextel estimates it would take 1,000 hours and $200,000 merely to alter a system to allow for one label that exceeded the system's character limitations.

Although some consumer groups argue that all carriers must use exactly the same language on their bills to avoid customer confusion, they undermine their own positions by asserting that each state should be permitted to adopt its own mandatory labels.[38/] Apparently, controlling the language used by carriers is more important to these organizations than the consistency of the message. The inevitable burdens on carriers and their speech rights that would result underscores the need for the Commission to stay out of the label writing business and let carriers use their own judgment on how best to provide clear, concise, and accurate bills to their customers.

C. Combination of Charges

It is not misleading or otherwise unreasonable for carriers to recover the costs of more than one federal program in a single line item and to label the charge as a "regulatory assessment

---

37/ MCI Comments at 9-10; Verizon Wireless Comments at 7.

38/ *See* AARP et. al Comments at 9-11 and 12-24; NASCUA Comments at 14-16.

fee" or something similar. As CTIA points out, any rules that control the manner in which carriers present specific regulatory charges would limit the ability of carriers to provide current and prospective customers with valuable information that would enable them to compare carriers' service offerings and calling plans.[39/] Verizon Wireless also points to some significant practical problems with requiring separation of fees into their own line items -- the charge for one of the programs may be less than a penny per month and, in any case, such a requirement would necessarily expand the length and complexity of bills.

Although NASUCA acknowledges its proposal to require separate lines for each charge "may produce a plethora of line items that appear on a customer's bills," it claims that this is an "unavoidable consequence" of the Commission's decision to allow carriers to use line items for non-mandated charges.[40/] NASUCA is wrong -- it's proposed "fix" is completely avoidable. Notwithstanding NASUCA's "blame the FCC" approach, common sense dictates that consumers will not be served by any requirement that makes their bills *less* easy to read and understand. The Commission should decline to micromanage the relationship between carriers and their customers in this manner.

D. Point of Sale Disclosures

Of all the new rules proposed in the *TIB Second FNPRM*, those on point of sale disclosures are perhaps the most troubling. As a threshold matter, such a rule is unneeded and would be costly and impractical to implement. No carrier disputes the need to provide prospective customers with complete information about the rates and services they will be purchasing, and most of them assert that they are doing so already as a matter of business

---

39/ CTIA Comments at 16.

40/ NASUCA Comments at 19.

strategy. USA Mobility correctly explains that, as a practical matter, few CMRS carriers could get away with failing to disclose information about their rates and fees. MCI similarly notes that if carriers do not provide such information, they will be punished in the marketplace. Wireless carriers currently comply with the comprehensive disclosure requirements set forth in the CTIA Code, and the record does not evidence a need for anything more.

In any event, the Commission's tentative conclusion that "carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale,"[41/] raises some serious practical concerns. Regardless of which definition of "mandated" the Commission ultimately adopts, it would be extremely burdensome for carriers to provide a detailed and accurate estimate of all the local and state taxes and fees, which can vary depending on which side of the street the customer lives. Moreover, if the Commission chooses to define "mandated" narrowly, the universe of supposedly discretionary charges will expand to encompass all state and local taxes that a government entity refuses to designate as "required." Because these taxes -- regardless of what they are called -- also fluctuate widely from location to location, it would be very difficult, if not infeasible, for carriers to provide the actual "full rate" at the point of sale without risk that the information is faulty, and could be viewed as potentially misleading by the customer.

A point of sale disclosure rule has to be viewed with concern because the cost of such a requirement would be great with little benefit to consumers. Verizon asserts that in order to provide the full rate and required estimates, its sales representatives would have to consult manuals to research which taxes apply in which jurisdiction and then manually add them using a calculator. Verizon estimates that adding one minute to each sales call to perform these tasks

---

[41/] *TIB Second FNPRM* ¶ 55.

would cost Verizion over $21 million just in call center time.[42/] If the rule is coupled with the Commission's proposed arbitrary percentage amount on what constitutes a "misleading" estimate, it would expose carriers to litigation and liability notwithstanding their best efforts.

If the Commission nonetheless believes that it must codify a disclosure requirement, it should adopt general guidelines instead of prescriptive rules. Even then, there is no basis for establishing a verification process to track carrier disclosures, as AARP proposes. The long distance carriers, who have had the most experience with such procedures, explain that keeping customers on the phone for the additional time it takes to obtain a third party verification causes significant annoyance. AT&T, for example, notes that an appreciable number of subscribers decline to take part in the verification process at all or abandon it before completion. CCTM likewise states that keeping customers on the phone to satisfy extensive slamming verification rules deters customers from switching carriers.

III. PREEMPTION OF STATE BILLING AND DISCLOSURE REGULATION IS ESSENTIAL TO ACCOMPLISH FEDERAL GOALS FOR THE WIRELESS INDUSTRY

As Congress and the Commission expected, and as wireless consumers demand, CMRS is provided on a national basis without regard to state boundaries. CTIA observes, for example, that a mobile phone purchased in one state may very well be used on a business trip or family vacation in another state. Truck drivers can check in with their companies' home offices no matter the highway they may be traveling. A subscriber may take her handset with her when she moves across the country and, because of the carrier's "bucket" plan, she may not feel the need to sign up for service in the new location. T-Mobile allows groups of customers to share minutes and offers them a unified single bill, regardless of whether they are family members or live in

---

42/ Verizon Comments at 10-11.

different states. A T-Mobile subscriber has certain expectations of the carrier and demands that level of service no matter the state in which he resides. These expectations extend to the format of his bills and the disclosures he receives when he interfaces with T-Mobile's sales staff.

Notwithstanding the national nature of the wireless industry, the state commissions argue that they should each have the opportunity to dictate what a wireless bill should look like, how charges must be described, and the language carriers must use when marketing their services. They contend that their oversight is necessary to protect consumers but, not surprisingly, they do not, or cannot, explain how ten, twenty, or fifty different rules on font size or disclosure verbiage could possibly benefit anyone. As Cingular demonstrates through its hypothetical bill containing universal service disclosures in dozens of different typefaces and various degrees of highlighting,[43/] divergent state requirements will result either in information overload to the consumer or permit the state with the most burdensome regime effectively to set policy for the entire country.[44/] Chairman Martin recognized this exact problem earlier this year, and asserted that supplemental state regulation for consumer protection purposes could result in "a single state . . . establishing a *de facto* national standard" for wireless service."[45/] Of course, that *de facto* national standard would be short-lived, as other states would likely seek to displace it with their own more onerous regime. Encouraging this kind of "competition" among state regulators would come at the expense of consumers since they ultimately would bear their carriers' escalating compliance costs.

43/ Cingular Comments at 17.

44/ Cingular Comments at 15-17; *see also* CTIA Comments at 25.

45/ Sprint Comments at 10 (citing Presentation of Commissioner Kevin J. Martin, *Wireless and Broadband: Trends and Challenges*, Dow Lohnes - Comm Daily Speaker Series, at 6-7 (Oct. 14, 2004)).

The real issue appears to be that states perceive a federal regulatory void and they want to fill it. If there is a void, however,[46/] it has been intentionally created. The Commission's predominantly deregulatory approach for wireless was intended to promote wireless competition, not for the sake of the companies, but for the benefit of consumers. As the wireless carrier commenters demonstrate -- and the state commissions are unable to dispute -- that goal has been achieved ten times over.[47/]

The state and consumer commenters point to this wireless success story as "proof" that the wireless industry has been flourishing under dual federal-state regulation for years without any adverse effects. That assertion, however, is misleading. Until very recently, most states, like the Commission, took a hands-off approach to wireless regulation and chose to rely instead primarily on competition to protect consumers. That has now changed. California was the first state to impose a comprehensive -- and costly -- regulatory regime for wireless,[48/] but it is not alone. Other states are following California's lead in micromanaging wireless carriers:

- NASUCA reports that Georgia has drafted a statute that prohibits recovery of state universal service contributions.[49/]
- Verizon reports that the Vermont Public Service Board has proposed to prohibit carriers from recovering the Vermont gross receipts tax as a separate charge, while Colorado now requires a separate line item for a certain rate element.[50/]

46/ Given the Commission's mandates on LNP, E911, number pooling, CALEA, and universal service over the past ten years, it is a stretch to say that the wireless industry has escaped regulation. Nevertheless, the Commission has appropriately chosen in many instances to rely on market forces instead of strict rules to ensure that consumers are adequately protected.

47/ *See, e.g.*, T-Mobile Comments at 3-5 (recounting market-based customer service advances such as penalty-free cancellation periods, increased clarity of bills, and T-Mobile's "Personal Coverage Check" service); Cingular Comments at 19-21 (explaining the value, recognized by Congress, that has been realized from national wireless services operating seamlessly "without regard to state lines").

48/ T-Mobile Comments at 13-14.

49/ *See FNPRM* at n.148.

50/ Verizon Comments at n.25.

- Ohio recently enacted a gross receipts tax bill that requires T-Mobile to pay a "Commercial Activity Tax" on its wireless subscribers' payments but prohibits the listing of this tax on subscribers' bills.[51/]
- The Texas legislature is currently considering passage of a "Truth In Telecommunications Billing" statute that would prohibit the inclusion of line items for any charges other than "applicable charges for service and options requested by the customer" and "taxes imposed by a governmental entity specifically on the customer."[52/]
- Kentucky recently revised Chapter 136 of the Kentucky Revised Statutes to impose a gross receipts tax on all cable and communications firms, and included a provision that "[t]he provider shall not collect the tax directly from the purchaser or separately state the tax on the bill to the purchaser."
- A pending amendment to the New York public service statute (A.8539) would require wireless carriers to list "taxes and fees which are required by federal or state statute or regulation to be collected from the customer" in a "separate section of the bill," and would prohibit carriers from so listing any charge "not required to be recovered from customers."
- A second, separate pending amendment to the New York general business law (A.5109) would require wireless carriers to "separately state on each statement of charges delivered to a consumer each charge, fee, tax, and surcharge that such supplier imposes or is required to impose pursuant to any law, rule or regulation, and the purpose of each such charge, fee, tax, and surcharge."
- A bill pending in the Massachusetts Senate (Senate No. 1790) would require "taxes and fees which are required by federal, state, or local statute or regulation to be collected from the subscriber" to be set forth in a separate section of the bill and itemized separately, and would prohibit any "charge which is not required to be recovered from subscribers" from being so listed.

NASUCA argues that the wireless industry concerns about the costs of state-by-state regulation "are more than a little exaggerated" because roughly half the states have exempted wireless carriers from utility commission regulation and many states that do regulate wireless providers exempt them from the more burdensome provisions of their billing regulations.[53/] As discussed above, however, even a single, federal mandate requiring the alteration of billing

---

51/ *See* Ohio Senate Budget Bill HB66 § 5751.02(B) (2005).

52/ *See* Floor Amendment No. 4 to S.B. 21 (introduced July 17, 2005), amending the Texas Utilities Code by addition of new sections 64.251-64.252.

53/ NASUCA Comments at 37.

systems could result in millions of dollars in additional costs. Producing a different billing format based on seemingly insignificant differences in state requirements -- whether it be ten or twenty-five variants -- would increase those costs exponentially.[54/]

Given the well-documented costs to both carriers and consumers of state-by-state regulation, the Commission has the authority -- indeed, the duty -- to displace state billing regulation under the doctrine of conflict preemption. The case law is clear on this point. Even if the Commission has chosen to rely on market forces rather than affirmatively regulate, it may preempt state law that is inconsistent with this policy choice. As the Commission itself emphasized in its 1994 *Second CMRS Report*, if "a State's regulation of other terms and conditions of jurisdictionally mixed services thwarts or impedes [the Commission's] federal policy of creating regulatory symmetry, [the Commission] would have authority under *Louisiana PSC* to preempt such regulation."[55/] The fact that the Commission may have left states with authority to regulate the non-rate terms and conditions of wireless service does not mean that Congress exempted state terms and conditions rules from preemption if such regulation otherwise thwarts federal policy.

Notwithstanding the Commission's preemption of billing and disclosure rules targeted specifically at wireless carriers, states will still be able to protect consumers through enforcement of their laws of general applicability.[56/] While NAAG contends that wireless carriers are asking

---

[54/] Cingular estimates that its own costs of proceeding in this manner for 50 different states would be hundreds of millions of dollars. Requiring each carrier to produce "only" 25 variants of its billing systems instead of 50 still would be prohibitively expensive.

[55/] *Implementation of Sections 3(n) & 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, 1506 ¶ 257 n.517 (1994) ("*Second CMRS Report*") (citing *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986)).

[56/] Those laws, of course, cannot be used to intrude on rate and entry matters reserved exclusively to the Commission under section 332(c)(3)(A). *See* Verizon Comments at 21. Furthermore, the Commission should clarify that state law challenges to wireless rates and rate structures wrapped in the

the Commission to immunize them from traditional state powers that govern similarly situated industries, quite the opposite is true. As T-Mobile and other wireless commenters have explained on numerous occasions, they simply want to be treated like other providers of goods and services in competitive markets. In that way, wireless consumers would be entitled to the same protection -- and the same benefits -- as all other consumers in a state.

Finally, the majority of commenters correctly argues that state enforcement of any billing and point of sale disclosure rules the Commission chooses to adopt would be unwise. As NASUCA, Sprint, and CTIA explain, such a delegation likely would be considered unlawful under *USTA II*.[57/] Moreover, unfettered state enforcement can lead to the adoption of more stringent requirements in the guise of enforcement. This is precisely what has occurred in the slamming context.[58/]

The slamming regime is inapposite to truth-in-billing and point of sale disclosures for another reason: the inquiry in the former context is inherently factual, while the latter are necessarily amenable to multiple and inconsistent or conflicting interpretations. The Commission's slamming rules contain specific details, such as what third-party verifiers must say to customers, when the carrier must drop off the line, and how long call records must be maintained. In addition, the rules set forth the procedures for carriers, subscribers, and regulators in the event a slamming allegation is made and permit a state commission administering the FCC's regime to require disgorgement only as spelled out by the FCC. Given the very specific

---

garb of state law nondisclosure, contractual, and consumer fraud claims are preempted as well. As Cingular explains, the class action plaintiffs' bar is capitalizing on the ambiguity in the current distinction. Cingular Comments at 40-46.

57/ NASUCA Comments at 17 (citing *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied sub nom., Nat'l Ass'n of Regulatory Uti. Comm'rs v. United States Telecom Ass'n*, 125 S. Ct. 313 (2004)); Sprint Comments at 12; CTIA Comments at 35.

58/ AT&T Comments at 13-15; Sprint Comments at 12-13.

nature of these requirements, enforcement generally does not range beyond a show-cause order, factual determinations as to whether an unauthorized change (as defined by the FCC) has occurred, and if so, ordering the penalties permitted under the rules.

Evaluation of whether a bill has met the more subjective test of clarity would be far more susceptible to interstitial rulemaking in the guise of enforcement. Cingular aptly notes that "[a] bill that is clear and non-misleading in accordance with federal standards does not somehow become unclear and misleading with respect to services rendered within some particular state."[59/] Disparate interpretations of Commission requirements in state enforcement proceedings, however, could have exactly that consequence.

[59/] Cingular Comments at 39.

CONCLUSION

For the foregoing reasons, T-Mobile urges the Commission to defer to the substantial record evidence of a thriving, responsive wireless market and decline to impose further regulatory burdens on wireless carriers' relationships with their subscribers. In addition, the Commission should take this opportunity to stem the tide of state and local wireless billing and disclosure regulation, including the putative "enforcement" of existing and future federal regulations, which currently threatens Commission and congressional goals of a vibrant, competition-driven wireless market.

Respectfully submitted,

T-MOBILE USA, INC.

/s/ Thomas J. Sugrue

Thomas J. Sugrue
Vice President, Government Affairs
Kathleen O'Brien Ham
Managing Director,
Federal Regulatory Affairs
James W. Hedlund
Senior Corporate Counsel,
Federal Regulatory Affairs

T-MOBILE USA, INC.
401 Ninth Street, N.W.
Suite 550
Washington, D.C. 20004
(202) 654-5900

Sara F. Leibman
Howard J. Symons
Robert G. Kidwell
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

July 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2005, I caused a true and correct copy of the foregoing Reply Comments to be served upon the following persons via ECFS and/or via E-mail, as indicated.

Served via ECFS:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 2054

Served via E-mail:

Fred Campbell
Fred.Campbell@fcc.gov

John Branscome
John.Branscome@fcc.gov

Paul Margie
Paul.Margie@fcc.gov

Barry Ohlson
Barry.Ohlson@fcc.gov

Sue McNeil
Sue.McNeil@fcc.gov

Leon Jackler
Leon.Jackler@fcc.gov

Monica Desai
Monica.Desai@fcc.gov

Catherine Seidel
Cathy.Seidel@fcc.gov

Thomas Wyatt
Thomas.Wyatt@fcc.gov

Jay Keithley
Jay.Keithley@fcc.gov

David Furth
David.Furth@fcc.gov

Erica McMahon
Erica.McMahon@fcc.gov

Robert G. Kidwell